Supreme Court, U.S.
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No. _____

In The

Supreme Court of the United States

INDIANAPOLIS BAPTIST TEMPLE,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

On Petition For Writ Of Certiorari To The United States Court Of Appeals For The Seventh Circuit

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED FOR REVIEW

Petitioner, Indianapolis Baptist Temple, is a Baptist Church founded in the succession of New Testament Churches from the time the New Testament Churches were founded by Jesus Christ as recorded by the scriptures of the Holy Bible to the present day. The Church polity of Indianapolis Baptist Temple is that of a special assembly of saved people as a visible body of Jesus Christ in Indianapolis, Indiana. The absolute sovereignty of the New Testament Church under the lordship of Jesus Christ as the sovereign head of the Church is the central tenet of the faith and practices of the Church. The Church polity does not permit Indianapolis Baptist Temple to organize or structure the Church government as a not-for-profit organization (i.e., corporation, unincorporated association or a trust) or any other legal entity. Indianapolis Baptist Temple does not claim tax-exempt benefits under section 501(c)(3) as a tax-exempt religious organization.

The United States of America assessed employer taxes to Indianapolis Baptist Temple as an unincorporated association. Indianapolis Baptist Temple did not pay the taxes or comply with the employer tax regulations because to do so would violate the central tenet of the faith of the Church by recognizing a sovereign greater than Jesus Christ as an authority with power to regulate the polity and practices of the Church.

The judgment of the District Court, affirmed by the Seventh Circuit Court of Appeals, found employer tax liabilities against the Church and distinguished the

QUESTIONS PRESENTED FOR REVIEW – Continued

religious nature of the Church from the legal nature of the Church. The lower Courts imputed to Indianapolis Baptist Temple a legal entity called an unincorporated association as the legal nature of the Church, which is contrary to the faith and practices and polity of the Church.

Question 1. Does the application of the employer tax statutes and regulations to Indianapolis Baptist Temple, which is a New Testament Church and not organized as a legal entity under State law and does not claim tax benefits as a tax-exempt religious organization or public charity under Section 501(c)(3) of the Internal Revenue Code, violate the free Exercise Clause or the Establishment Clause of the First Amendment of the United States Constitution when compliance with those statutes violates the faith and practices of the Church requiring the absolute sovereignty of the New Testament Church under the lordship of Jesus Christ as the head of the Church?

Question 2. Have the lower Courts established a State Church in violation of the Establishment Clause of the First Amendment of the United States Constitution by making a distinction between the religious nature of the Church and the legal nature of the Church, and imputing to Indianapolis Baptist Temple a legal entity as the legal nature for the Church when such a legal nature is contrary to the faith and practices and polity of the Church?

Question 3. Does the repudiation of the Church polity of Indianapolis Baptist Temple as a New Testament Church by the lower Courts and the imputation to the

QUESTIONS PRESENTED FOR REVIEW – Continued

Church of a legal nature contrary to the faith and practices of the Church violate the Ninth Amendment of the United States Constitution?

PARTIES TO THE PROCEEDINGS BELOW

All Parties appear in the caption of the case in the United States Supreme Court.

Petitioner, Indianapolis Baptist Temple, is a New Testament Church founded solely by authority of the scriptures of the Holy Bible (1611 King James Version). The Church polity is not structured or organized as a not-for-profit corporation, unincorporated association, trust or any other legal entity under state law.

A Corporate disclosure statement is not required by Rule 29.6 of the Rules of the Supreme Court of the United States.

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PETITION FOR WRIT OF CERTIORARI

Petitioner, Indianapolis Baptist Temple (IBT), by its Pastor and Trustee, Gregory A. Dixon, respectfully prays that a Writ of Certiorari be issued from this Honorable Court to review the judgment and opinion of the United States Court of Appeals for the Seventh Circuit entered in this proceeding on August 14, 2000, in order to review an important question of federal law that has not been, but should be, settled by this Court, or that has been decided in a way that conflicts with relevant decisions of this Court.

OPINIONS BELOW

The opinions entered by the United States District Court for the Southern District of Indiana, Indianapolis Division, No. IP98-0498 C-B/S, Sarah Evans Barker, Chief Judge, and the opinion of the United States Court of Appeals for the Seventh Circuit, No. 00-11002, entered August 14, 2000, are printed in the appendix hereto and are as follows:

A. Entry of the United States District Court entitled, "Entry Addressing Plaintiff's Motion For Summary Judgment and Defendant Indianapolis Baptist Temple's Motion for Summary Judgment" entered January 19, 1999 (Defendant, Indianapolis Baptist Temple's Motion for Summary Judgment Denied), reported at 61 Fed. Supp.2d 831.

B. Entry of the United States District Court entitled, "Entry Granting Plaintiff's Motion For Partial Summary Judgment" entered June 29,

1999 (Judgment entered against Defendant Indianapolis Baptist Temple in favor of Plaintiff United States of America for $5,319,750.27 as liability for employer taxes), reported at 61 Fed. Supp.2d 836.

C. Entry of the United States District Court entitled, "Judgment Order Including Foreclosure and Sale entered November 12, 1999" (Order for seizure and sale of Church properties to satisfy judgment lien), unreported by order of the District Court.

D. Judgment and opinion of the United States Court of Appeals for the Seventh Circuit, No. 00-11002, decided August 14, 2000 reported at 224 Fed.3d 627.

JURISDICTIONAL STATEMENT

On January 19, 1999, The United States District Court for the Southern District of Indiana, Indianapolis Division, denied IBT's motion for summary judgment and granted the federal government's motion for summary judgment on June 29, 1999. On November 12, 2000, the District Court entered a final order in the case including the foreclosure and sale of IBT's properties. IBT filed a notice of appeal to the United States Court of Appeals for the Seventh Circuit on January 10, 2000, and asked for an expedited hearing which was granted.

The judgment of the United States Court of Appeals for the Seventh Circuit, printed in the Appendix, which petitioner seeks to have reviewed, is dated and was entered on August 14, 2000, affirmed the decisions of the

District Court. Petitioner did not file a motion for a rehearing or request an order extending time in which to file a Writ of Certiorari.

Pursuant to Supreme Court Rule 13.1, this petition for Writ of Certiorari was filed within ninety (90) days of the entry of the judgment of the United States Court of Appeals for the Seventh Circuit.

The jurisdiction of this Court is invoked under § 1254 of Title 28 of the United States Code.

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED IN THIS CASE

This case involves the Free Exercise Clause and the Establishment Clause of the First Amendment of the United States Constitution and the Ninth Amendment of the United States Constitution.

The First Amendment of the United States Constitution provides in part:

> Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; . . .

The Ninth Amendment of the United States Constitution provides:

> The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people.

26 U.S.C. § 3102(a) provides:

> (a) Requirement: The tax imposed by section 3101 shall be collected by the employer of

the taxpayer, by deducting the amount of the tax from the wages as and when paid. An employer who in any calendar year pays to an employee cash remuneration to which paragraph (7)(B) of section 3121(a) is applicable may deduct an amount equivalent to such tax from any such payment of remuneration, even though at the time of payment the total amount of such remuneration paid to the employee by the employer in the calendar year is less than the applicable dollar threshold (as defined in section 3121(x)) for such year; and an employer who in any calendar year pays to an employee cash remuneration to which paragraph (7)(C) or (10) of section 3121(a) is applicable may deduct an amount equivalent to such tax from any such payment of remuneration, even though at the time of payment the total amount of such remuneration paid to the employee by the employer in the calendar year is less than $100; and an employer who in any calendar year pays to an employee cash remuneration to which paragraph (8)(B) of section 3121(a) is applicable may deduct an amount equivalent to such tax from any such payment of remuneration, even though at the time of payment the total amount of such remuneration paid to the employee by the employer in the calendar year is less than $150 and the employee has not performed agricultural labor for the employer on 20 days or more in the calendar year for cash remuneration computed on a time basis; and an employer who is furnished by an employee a written statement of tips (received in a calendar month) pursuant to section 6053(a) to which paragraph (12)(B) of section 3121(a) is applicable may deduct an amount equivalent to such tax with respect to

such tips from any wages of the employee (exclusive of tips) under his control, even though at the time such statement is furnished the total amount of the tips included in statements furnished to the employer as having been received by the employee in such calendar month in the course of his employment by such employer is less than $20.

26 U.S.C. § 3102(b) provides:

(b) Indemnification of employer. Every employer required so to deduct the tax shall be liable for the payment of such tax, and shall be indemnified against the claims and demands of any person for the amount of any such payment made by such employer.

26 U.S.C. § 3111(a) provides:

(a) Old-age, survivors, and disability insurance. In addition to other taxes, there is hereby imposed on every employer an excise tax, with respect to having individuals in his employ, equal to the following percentages of the wages (as defined in section 3121(a)) paid by him with respect to employment (as defined in section 3121(b)) –

In cases of wages paid during:	The rate shall be:
1984, 1985, 1986, or 1987	5.7 percent
1988 or 1989	6.06 percent
1990 or thereafter	6.2 percent.

26 U.S.C. § 3111(b) provides:

(b) Hospital insurance. In addition to the tax imposed by the preceding subsection, there is hereby imposed on every employer an excise tax, with respect to having individuals in his employ, equal to the following percentages of the wages (as defined in section 3121(a)) paid by him with respect to employment (as defined in section 3121(b)):

(1) with respect to wages paid during the calendar years 1974 through 1977, the rate shall be 0.90 percent;

(2) with respect to wages paid during the calendar year 1978, the rate shall be 1.00 percent;

(3) with respect to wages paid during the calendar years 1979 and 1980, the rate shall be 1.05 percent;

(4) with respect to wages paid during the calendar years 1981 through 1984, the rate shall be 1.30 percent;

(5) with respect to wages paid during the calendar year 1985, the rate shall be 1.35 percent; and

(6) with respect to wages paid after December 31, 1985, the rate shall be 1.45 percent.

(c) Relief from taxes in cases covered by certain international agreements. During any period in which there is in effect an agreement entered into pursuant to section 233 of the Social Security Act with any foreign country, wages received by or paid to an individual shall be

exempt from the taxes imposed by this section to the extent that such wages are subject under such agreement to taxes or contributions for similar purposes under the social security system of such foreign country.

26 U.S.C. § 3301 provides:

There is hereby imposed on every employer (as defined in section 3306(a)) for each calendar year an excise tax, with respect to having individuals in his employ, equal to –

(1) 6.2 percent in the case of calendar years 1988 through 2007; or

(2) 6.0 percent in the case of calendar year 2008 and each calendar year thereafter; of the total wages (as defined in section 3306(b)) paid by him during the calendar year with respect to employment (as defined in section 3306(c)).

26 U.S.C. § 3402(a) provides:

(a) Requirement of withholding.

(1) In general.

Except as otherwise provided in this section, every employer making payment of wages shall deduct and withhold upon such wages a tax determined in accordance with tables or computational procedures prescribed by the Secretary. Any tables or procedures prescribed under this paragraph shall –

(A) apply with respect to the amount of wages paid during such periods as the Secretary may prescribe, and

(B) be in such form, and provide for such amounts to be deducted and withheld, as the Secretary determines to be most appropriate to carry out the purposes of this chapter and to reflect the provisions of chapter 1 applicable to such periods.

(2) Amount of wages. For purposes of applying tables or procedures prescribed under paragraph (1), the term "the amount of wages" means the amount by which the wages exceed the number of withholding exemptions claimed multiplied by the amount of one such exemption. The amount of each withholding exemption shall be equal to the amount of one personal exemption provided in section 151(b), prorated to the payroll period. The maximum number of withholding exemptions permitted shall be calculated in accordance with regulations prescribed by the Secretary under this section, taking into account any reduction in withholding to which an employee is entitled under this section.

26 U.S.C. § 3403 provides:

The employer shall be liable for the payment of the tax required to be deducted and withheld under this chapter, and shall not be liable to any person for the amount of any such payment.

STATEMENT OF THE CASE

The United States instituted this action under §§ 7401 and 7403 of the Internal Revenue Code (Title 26) (IRC) by

filing a complaint in the United States District Court for the Southern District of Indiana, Indianapolis Division, (District Court), seeking to reduce federal employer tax assessments that the Internal Revenue Service had assessed against IBT as an unincorporated association for the tax years 1987 through 1993 to judgment and to foreclose tax liens against real properties in possession of the Church. The District Court had jurisdiction over this action via §§ 1331, 1340 and 1345 of Title 28 of the United States Code and IRC § 7402.

In the year 1987, IBT was functioning as a "New Testament Church," founded and organized under the sole authority of the scriptures of the Holy Bible. IBT was founded in Indianapolis, Indiana, in 1950 as a New Testament Church as the next in line of a succession of Baptist Churches that trace the lineage of the Baptist Churches to the founding of the New Testament Churches by Jesus Christ during His earthly ministry through the Apostle John and an ancient New Testament Church founded by Polycarp in A.D. 150 called, "Bing Joy, Africa."

The Church polity of IBT is that "local, visible Church" model taught by the scriptures of the Holy Bible to be a special assembly of saved people called out and placed into the assembly by Jesus Christ as a visible body of Jesus Christ in Indianapolis, Indiana. The absolute sovereignty of the New Testament Church under the lordship of Jesus Christ as the sovereign head of the Church is the central tenet of the faith and practices of the Church.

The Church polity does not permit Indianapolis Baptist Temple to organize or structure the Church government as a not-for-profit organization (i.e., corporation, unincorporated association or a trust) or any other legal entity. As a New Testament Church, IBT existed as a separate and distinct body authenticated by the scriptures of the Holy Bible as the local, visible body of Jesus Christ, and did not claim tax-exempt benefits under § 501(c)(3) as a tax-exempt religious organization or public charity in 1987 or at any time thereafter.

The United States of America assessed employer taxes to IBT as an unincorporated association. An unincorporated association is a legal entity formed under State law and cannot be a New Testament Church founded under the scriptures of the Holy Bible. IBT did not pay the taxes assessed because IBT was not an unincorporated association and, as a New Testament Church, could not be an unincorporated association. If IBT were to form an unincorporated association as a legal entity for the government of the Church or pay the tax, IBT would violate the central tenet of the faith of the Church by recognizing a sovereign greater than Jesus Christ as an authority with power to regulate the polity and practices of the Church.

The case was submitted to the District Court on cross-motions for summary judgment on undisputed declarations of fact. IBT invoked the Free Exercise and the Establishment of Religion Clauses of the First Amendment of the United States Constitution as the sole defense for the Church on the grounds that the Church and its religious convictions were protected by the United States Constitution. The federal government conceded that

IBT's religious convictions were sincerely held and that the federal tax scheme conflicts with IBT's religious doctrine.

The District Court denied IBT's motion for summary judgment and granted the federal government's motion for summary judgment. On November 12, 1999, the District Court entered a final judgment in the case, and IBT timely-filed a Notice of Appeal to the United States Court of Appeals for the Seventh Circuit (Court of Appeals) on January 10, 2000. The Court of Appeals had jurisdiction over this action via § 1291 of Title 28 of the United States Code. The Court of Appeals affirmed the decisions of the District Court on August 14, 2000.

Both the District Court and the Court of Appeals rejected Constitutional protection for: (1) IBT as a New Testament Church; (2) the religious convictions of the Church concerning its polity as that of a "local, visible Church" as taught by the scriptures of the Holy Bible; and (3) its religious convictions and faith in the Holiness of the Lord Jesus Christ as the sovereign head of the Church. In doing so, the lower Courts distinguished between the legal nature of the Church and the religious nature of the church by imputing to IBT the legal entity of an unincorporated association as the legal nature of IBT.

In denying IBT's motion for summary judgment, the District Court said:

> IBT even suggests that it is neither a corporation nor an unincorporated religious society. Rather, it is a New Testament Church and nothing more. This position fails to recognize the legal nature of IBT, which the record establishes to be that of an unincorporated religious society (p10, fn8).

The Court of Appeals said:

> Second, IBT takes issue with the district court's characterization of it as an unincorporated religious society under Indiana Law. IBT contends that it is a "New Testament Church," and not an unincorporated religious society, and that by characterizing it as such an entity, the district court "established" a state church and imposed on IBT a form of worship contrary to its beliefs. The district court did neither of these things. It simply described the legal (not religious) nature of an already established church. (p9)

REASONS FOR GRANTING THE WRIT

I. The Seventh Circuit's opinion has decided an important question of federal law involving First Amendment protections of the Church, its polity, faith and practices from governmental regulation, interference and control that has not been, but should be, settled by this Court.

This case is not a tax case. This case presents a religious liberty issue that goes back to the foundational purpose for which the Religious Liberty Clauses of the First Amendment were established. This issue goes to the very essence of the Religious Liberty Clauses. It involves the right of the New Testament Church to exist in America.

The issue presented has never been presented to this Court before. There has never been a need for this Court

to consider this issue before, because the federal government has never attempted to regulate the polity of a New Testament Church or its ministries before. This case is of paramount importance, not only to IBT, but to society in general. By its opinion, the Seventh Circuit Court of Appeals has in effect criminalized not only the faith and practices of IBT, but also the faith and practices of every New Testament Church in the United States. The decision exposes all New Testament Churches in the United States to criminal and civil sanctions for the exercise of their faith in the Lordship of Jesus Christ as the sovereign head of His Church.

By targeting a New Testament Church, the government has actually targeted God. God is the issue. God is either the head of His Church or He is not. The Seventh Circuit says He is not by distinguishing between the "legal nature" of the Church and the "religious nature of the Church." By making such a distinction, the Seventh Circuit has defined a Church not only for the purposes of the tax statutes but also for the purposes of the Constitution. By making the distinction, the Seventh Circuit has taken God out of the New Testament Church and put its members in a position where they, as a special assembly (i.e., Church), have to choose whether or not to violate the First Commandment of the Ten Commandments: "Thou shalt have none other gods before me." (Deuteronomy 5:7, King James 1611 version).

At the risk of over-simplification, but only for the purposes of brevity as required by the rules, three primary models for Christian Churches exist in the world today. Each model arose at different times in history, and each has its own polity, faith and practices.

The first model originated in the First Century, A.D., as recorded in the scriptures of the Holy Bible. The Church polity is that of a "New Testament Church" founded by the Lord Jesus Christ during his ministry on earth as the "local, visible body of Christ (i.e. Church)." The historic Baptist Churches adhere to this model.

The second model originated in Rome in A.D. 325 and was founded by the Emperor Constantine when he formed a league with some of the New Testament Churches of that time and declared the Christian religion to be the religion of Rome. The Church polity of the Constantine Church was based upon the "universal, visible Church." This model became the model for the Roman Catholic Church in A.D. 610 when The Roman Emperor Phocus ordained Boniface as the first Pope and invested him with supreme ecclesiastical jurisdiction.

The third model had its origin at the Diet of Spires in A.D. 1529 with the origin of the Protestant Church and its many denominations. The Church polity of the Protestant Church is the "universal, invisible Church," which makes a distinction between the "legal nature" of a visible Church and the "religious nature" of the spiritual Church.

The central tenet of the Baptist Churches adhering to the "local, visible Church" model is the absōlute sovereignty of the Church under the Lordship of Jesus Christ as the head of the Church. The doctrine of the Church requires the complete separation of the Church from the state. This doctrine of separation conflicts with the doctrine of both the Catholic Church and the many

denominations of protestant churches which became established as state churches.

The doctrine of the universal church models is not offended by church-state associations, and the protestant churches became state established churches (i.e. Lutheran-Germany; Presbyterian-Scotland; Church of England-England). Throughout Church history, the state established churches warred against the New Testament Churches who resisted their authority over the local, New Testament Churches, and persecuted them. The First Amendment purposed to end the persecution of the local New Testament Churches, called "Baptist Churches," and prevent the state from establishing a state Church in the United States.

The decision of the Seventh Circuit puts the New Testament Churches back to the place they were in before the First Amendment was adopted. Today, IBT is being punished for adhering to the faith and practices of the New Testament Church as a "local, visible body of Christ" by the loss of the Church properties and criminal and civil sanctions.

Further, the decision establishes the "universal Church" model whose doctrine is not offended by state-church alliances as a state church in the United States to the exclusion of the practice of the faith and practice of those Churches adhering to the New Testament "local, visible body of Christ" model.

This Court has reviewed the effect of government regulations, tax laws, etc. on the religious beliefs of:

(1) Individuals: *See, United States v. Lee,* [455 U.S. 252 (1982)] where an Amish businessman was required to withhold Social Security taxes from his employees; *Hernandez v. Commissioner,* [490 U.S. 680 (1989)] where an individual was not allowed to deduct payments to the Church of Scientology; and *Employment Div., Ore. Dept. of Human Res. v. Smith,* [494 U.S. 872 (1990)], involving unemployment benefits to an individual.

(2) Christian Churches and Christian Ministries modeled upon the "universal, invisible Church" model as tax-exempt religious institutions: *See, Bob Jones University v. United States,* [461 U.S. 574 (1983)] where the court held that the tax-exempt gift to a tax-exempt nonprofit corporation was a public subsidy and all laws and public policies are binding upon it; *Swaggart Ministries v. Cal. Bd. of Equalization,* [493 U.S. 378 (1990)] where a tax-exempt nonprofit corporation was required to pay state sales tax; *Corporation of Presiding Bishop v. Amos,* [483 U.S. 327 (1987)] where the Civil Rights Act was held not to apply to nonprofit facilities associated with the Mormon Church which is an unincorporated religious association; and *City of Boerne v. Flores, Archbishop of San Antonio,* [521 U.S. 507 (1997)] where a Catholic archbishop applied for a building permit to enlarge a Catholic Church.

(3) Non-Christian faiths organized as tax-exempt religious institutions: *See, Church of the Lukumi Babalu Aye, Inc. v. City of Hialeah,* [508 U.S. 520, 546-47 (1993)] where the court upheld the sacrifice of chickens as a religious animal sacrifice protected by the First Amendment for the Santeria religion which is organized as a tax-exempt nonprofit corporation.

But this Court has never considered the effect of government regulations on the faith and practices of the New Testament Church which is a special assembly of saved people existing as the body of Christ on earth as the Lord's "ecclesia" (Matthew 16:18).

All the facts in these cases can be distinguished from the facts present in IBT. The Seventh Circuit refused to distinguish these facts from the facts of IBT and relied upon *Smith*. The Seventh Circuit said,

> Significantly, however, neutral laws of general application that burden religious practices do not run afoul of the Free Exercise Clause. [p.4].

Although the tax laws appear to be neutral on their face, it cannot be argued that the tax laws are "neutral in their effect" when applied to the doctrine, faith and practices of the New Testament Church. This is an issue that was not present in *Smith* that this Court has not yet ruled upon.

Only this Court can settle this issue, the issue of God as the sovereign head of His Church. Can the government tax God? Can the government regulate God? If the decision of the Seventh Circuit stands, the answer is yes, and the decisions of this Court and the Seventh Circuit have rendered the protections of the Religious Liberty Clauses of the First Amendment of the United States Constitution for the New Testament Churches of non-effect.

II. The Seventh Circuit's opinion has decided an important federal question in a way that conflicts with relevant decisions of this court.

The Seventh Circuit opinion conflicts with the holding of this Court in *Murdock v. Pennsylvania,* [319 U.S. 105 (1943)]. In *Murdock,* this Court struck down a flat license tax imposed on the activities of the Jehovah's Witnesses because the tax was levied and collected as a prior restraint to the exercise of religion. The Court said,

> The constitutional rights of those spreading their religious beliefs through the spoken and printed word are not to be gauged by standards governing retailers or wholesalers of books.

Citing *Magnano Co. v. Hamilton,* [292 U.S. 40, 44 (1934)], the Court said,

> The power to tax the exercise of a privilege is the power to control or suppress its enjoyment.

The facts in the IBT case are not unlike those in *Murdock.* The imposition of the employer tax laws to the New Testament Church existing solely under the authority of the scriptures of the Holy Bible as a special assembly of saved people as a sovereign body under the Lordship of Jesus Christ operates as a prior restraint on the exercise of their religion. The assembly cannot exist unless it first denies its faith in the Holiness of the Lord Jesus Christ and recognizes the government as the head of the Church instead of Christ. In accordance with this Court's holding in *Murdock,* the New Testament Church and its polity, faith and practices cannot be gauged by standards governing individuals, businesses, tax-exempt public charities or tax-exempt religious organizations

whose religious convictions, church polity, faith and practices are not offended by church-state entanglements. The power to tax the New Testament Church in effect controls and suppresses the exercise of the faith and practices of the Church.

The Seventh Circuit opinion also conflicts with the holding of this Court in *Rector, Etc., of Holy Trinity Church v. United States,* [143 U.S. 457 (1892)]. The *Holy Trinity Church* was a case where the government first attempted to regulate the church by enforcing the "Alien Laws" to the church. The government attempted to deport a Bishop the Church had brought over from Europe. This Court rebuffed the government's attempt. After reviewing and considering the foundational and fundamental laws and customs upon which this nation was founded, this Court said,

> The language of the act, if construed literally, evidently leads to an absurd result. If a literal construction of the words of a statute be absurd, the act must be so construed as to avoid the absurdity. (citations).

Citing, *United States v. Kirby,* [7 Wall. 482 (1868)], this Court said,

> All laws should receive a sensible construction. General terms should be so limited in their application as not to lead to injustice, oppression or an absurd consequence. It will always, therefore, be presumed that the legislature intended exceptions to its language which would avoid results of this character.

Then this Court asked,

> In the face of all these, shall it be believed that a congress of the United States intended to make it a misdemeanor for a Church of this country to contract for the services of a Christian minister residing in another nation.

Then the Court held that the statute was not applicable to the Church of Holy Trinity and said,

> It is the duty of the courts, under those circumstances to say that, however broad the language of the statute may be, although within the letter, is not within the intention of the legislature, and therefore cannot be within the statute. [*Rector, Etc., of Holy Trinity Church v. United States*, 143 U.S. 457, 469 (1892)].

The imposition of the employer tax laws to IBT has lead to the prosecution of the Church; the seizure and sale of its properties; the exposure of all New Testament Churches in the United States to criminal and civil sanctions for exercising their faith in the Lordship of Jesus Christ as the Holy, sovereign head of the Church in all things; and the ultimate extinction of the New Testament Churches in the United States. These results are absurd in light of the history of the Religious Liberty Clauses of the First Amendment of the United States Constitution.

Congress simply did not intend the employer tax laws to apply to a New Testament Church that has not organized itself as a public charity seeking benefits as a tax-exempt organization under § 501(c)(3) of the Internal Revenue Code.

CONCLUSION

The Petition for Writ of Certiorari should be granted.

Respectfully submitted,

ALBERT F. CUNNINGHAM
Attorney for Petitioner

In the

United States Court of Appeals

for the Seventh Circuit

No. 00-1102

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

v.

INDIANAPOLIS BAPTIST TEMPLE,

Defendant-Appellant.

Appeal from the United States District Court
for the Southern District of Indiana,
Indianapolis Division.
No. IP98-0498 C-B/S – **Sarah Evans Barker,** *Chief Judge.*

ARGUED MAY 11, 2000 – DECIDED AUGUST 14, 2000

Before COFFEY, EVANS, and WILLIAMS, *Circuit Judges.*

WILLIAMS, *Circuit Judge.* The members of Indianapolis Baptist Temple (IBT) believe it to be a sin for their church to pay taxes. Accordingly, since at least 1987, IBT has paid none of the federal employment taxes for which it is responsible. After attempts to secure payment of the taxes due through 1993 failed, the government filed suit against IBT to recover the amount owed. Unpersuaded by IBT's various defenses, the district court granted the government summary judgment. IBT now appeals on the

ground that the religion clauses of the First Amendment protect it from liability. We affirm.

I

IBT was founded in 1950 and operated as a not-for-profit corporation until 1983, when it began operating as a unincorporated religious society. In 1986, IBT renounced its status as an unincorporated religious society, opting instead to define itself as a "New Testament Church," based on its belief that the exclusive sovereignty of Jesus Christ over the church required it to disassociate itself from secular government authority. Around the same time, and for the same reason, IBT also stopped filing federal employment tax returns and paying the federal employment taxes for which it was responsible.

There are three federal employment taxes – the social security tax, the medicare tax, and the normal income tax. Employers must pay half of the applicable social security and medicare taxes and must withhold from employees' wages the other half of the applicable social security and medicare taxes, as well as all of the applicable normal income tax. 26 U.S.C. §§ 3102(a), 3111(a), (b), 3402. Employers are liable for both the taxes imposed directly on them and the taxes they are required to withhold from employees. 26 U.S.C. §§ 3102(b), 3111(a), (b), 3403. Since sometime before 1987, IBT has paid none of these taxes.

Eventually, the Internal Revenue Service (IRS) contacted IBT about its failure to file employment tax returns, but IBT offered no indication that it would file returns. As a result, in early 1994, the IRS prepared

quarterly returns for IBT beginning in 1987 and continuing through 1993. The IRS then sent the forms to IBT so that IBT could check the accuracy of the amounts on the returns, but IBT submitted no corrections. After the time for submitting corrections had passed, the IRS calculated an assessment of tax, interest, and additions totaling $3,498,355.62 and sent a notice and demand for payment to IBT.

When the assessment went unpaid, the government filed suit against IBT seeking to reduce the assessment to a judgment and to initiate foreclosure proceedings against two parcels of real estate owned by IBT. In defense of its failure to pay, IBT argued that the tax assessments at issue were not properly made against it and that the religion clauses of the First Amendment protect it from liability. On cross-motions for summary judgment, the district court rejected both of IBT's arguments and awarded the government the relief it sought. IBT now appeals, but only on the ground that the First Amendment's religion clauses prevent the government from taxing it.

II

IBT challenges the district court's decision on the grounds that both the Free Exercise and Establishment Clauses of the First Amendment, as well as general principles of religious liberty embodied in the First Amendment, protect it from having to pay taxes. As with all appeals from decisions granting summary judgment, we review the district court's decision *de novo*, construing the evidence and the inferences drawn from it in the light

most favorable to the non-moving party. *Curran v. Kwon*, 153 F.3d 481, 485 (7th Cir. 1998).

A. Free Exercise Clause

IBT contends that the federal employment tax laws, as applied to it, violate the Free Exercise Clause of the First Amendment by requiring the church to act in a manner inconsistent with its beliefs. Specifically, IBT alleges that complying with the federal employment tax laws would require it to recognize the sovereignty of the federal government over the church, something that would be inconsistent with its belief in the exclusive sovereignty of Jesus Christ over the church. In IBT's view, the Free Exercise Clause grants it a right to act in accordance with its beliefs, notwithstanding contrary federal law.

The Free Exercise Clause absolutely protects the freedom to believe and profess whatever religious doctrine one desires. *Employment Div., Dep't of Human Resources v. Smith*, 494 U.S. 872, 876-77 (1990); *Sherbert v. Verner*, 374 U.S. 398, 402 (1963). It also provides considerable, though not absolute, protection for the ability to practice (through the performance or non-performance of certain actions) one's religion. *Smith*, 494 U.S. at 877-78; *Church of the Lukumi Babalu Aye, Inc. v. City of Hialeah*, 508 U.S. 520, 546-47 (1993). Significantly, however, neutral laws of general application that burden religious practices do not run afoul of the Free Exercise Clause. *Smith*, 494 U.S. at 878-85.

IBT does not (and, in any event, could not) contest the government's characterization of the federal employment tax laws as neutral laws of general application. Those laws are not restricted to IBT or even religion-related employers generally, and there is no indication that they were enacted for the purpose of burdening religious practices. Contrast *Church of the Lukumi Babalu Aye*, 508 U.S. at 531-45 (concluding that laws forbidding a particular religion's animal sacrifices were neither neutral nor generally applicable). Accordingly, IBT's Free Exercise challenge to the federal employment tax laws must be rejected.

IBT, however, argues from the premise that this conclusion does not follow directly from the fact that the federal employment tax laws are neutral laws of general application. Rather, IBT proceeds as though the Religious Freedom Restoration Act (RFRA), 42 U.S.C. § 2000bb-1 *et seq.*, somehow overturned the Supreme Court's decision in *Smith* – that neutral laws of general application cannot be attacked on Free Exercise grounds – and reinstated the pre-*Smith* standards for evaluating Free Exercise challenges. RFRA did not (and could not) do this. See *City of Boerne v. Flores*, 521 U.S. 507, 516-20, 535-36 (1997). RFRA simply established an independent statutory regime essentially prohibiting the enforcement of laws that cannot satisfy the pre-*Smith* standards.[1]

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[1] We are aware that the constitutionality of RFRA as applied to the federal government is not without doubt. Contrast *City of Boerne*, 521 U.S. at 536-37 (Stevens, J., concurring) (suggesting that RFRA is unconstitutional under the Establishment Clause), with *Christians v. Crystal Evangelical Free Church (In re Young)*, 141 F.3d 854 (8th Cir.) (upholding

Even if IBT's misguided attempts to invoke RFRA as a constitutional standard are construed generously as an effort to seek relief on statutory grounds, IBT's challenge to the federal employment tax laws must still be rejected. Under RFRA, laws that substantially burden the free exercise of religion cannot be enforced unless the burden furthers a compelling government interest and is the least restrictive means of furthering that interest. 42 U.S.C. § 2000bb-1. In several pre-*Smith* Free Exercise challenges to the application of federal tax laws, the Supreme Court and various courts of appeals concluded both that maintaining a sound and efficient tax system is a compelling government interest and that the difficulties inherent in administering a tax system riddled with judicial exceptions for religious employers make a uniformly applicable tax system the least restrictive means of furthering that interest. See *Hernandez v. Commissioner*, 490 U.S. 680, 698-700 (1989) (challenge to federal income tax); *United States v. Lee*, 455 U.S. 252, 258-60 (1982) (challenge to social security tax); *South Ridge Baptist Church v. Industrial Comm'n*, 911 F.2d 1203, 1206-10 (6th Cir. 1990) (challenge to premiums required by workers' compensation program); *Bethel Baptist Church v. United States*, 822 F.2d 1334, 1338-39 (3d Cir. 1987) (challenge to social security tax). The cases that have been decided under RFRA reach the same conclusion. See *Browne v. United States*, 176 F.3d 25, 26 (2d Cir. 1999) (challenge to federal income tax); *Adams*

RFRA against an Establishment Clause challenge), cert. denied, 525 U.S. 811 (1998). However, as the government does not contest the law's constitutionality here, we will assume the law is constitutional. See *Adams v. Commissioner*, 170 F.3d 173, 175 (3d Cir. 1999).

v. Commissioner, 170 F.3d 173, 175-80 (3d Cir. 1999) (same); *Droz v. Commissioner*, 48 F.3d 1120, 1122-25 (9th Cir. 1995) (challenge to social security tax). We find this authority persuasive and see no reason to reach a different conclusion.

IBT, however, claims that the cases we have cited can be distinguished on factual grounds as each involved a state-recognized legal entity, whereas IBT is simply a "New Testament Church." But, none of these cases, expressly or implicitly, rely on the fact that the entities involved were state-recognized, nor does such a distinction have any logical connection to the relevant legal standards. Accordingly, we conclude that RFRA provides no basis for sustaining IBT's challenge to the federal employment tax laws.

B. Establishment Clause

IBT contends that applying the federal employment tax laws to it violates the Establishment Clause of the First Amendment by deeply involving the government in the internal affairs of the church. In IBT's view, the payment and withholding obligations imposed by these laws, as well as the enforcement proceedings that have resulted from IBT's refusal to comply with these laws, require a constitutionally impermissible amount of government involvement in church affairs.

The Establishment Clause prohibits government sponsorship of, financial support for, and active involvement in religious activities. *Jimmy Swaggart Ministries v. Board of Equalization*, 493 U.S. 378, 393 (1990); *Walz v. Tax*

Comm'n, 397 U.S. 664, 668 (1970). However, total separation of church and state is not required. *Walz*, 397 U.S. at 668-72. If a statute has a secular purpose and it has a primary effect of neither advancing nor inhibiting religion, it will be upheld. *Mitchell v. Helms*, 120 S. Ct. 2530, 2540 (2000) (plurality opinion); *Agostini v. Felton*, 521 U.S. 203, 232-33 (1997).

IBT concedes that the federal employment tax laws have a secular purpose and only contends that the laws have a primary effect of inhibiting religion to the extent that they foster excessive government entanglement with religion. *Cf. Agostini*, 521 U.S. at 233 (listing excessive entanglement as one of three primary factors to be considered in evaluating the effect of a law for Establishment Clause purposes). In support of its excessive entanglement argument, IBT relies exclusively on *Walz v. Tax Commission*, which upheld a property tax exemption for houses of worship against an Establishment Clause challenge, reasoning in part that removing the exemption would likely create greater government entanglement (through property valuations, tax liens, tax foreclosures, etc.) than leaving it in place would. 397 U.S. at 674. IBT claims that *Walz* thus implies that taxing religious organizations (and all that goes with taxing such organizations) fosters unconstitutionally excessive government entanglement.

We cannot accept IBT's reading of *Walz*. While taxing religious organizations involves greater government entanglement than not taxing them does, this greater entanglement is not necessarily unconstitutionally excessive. In fact, the Supreme Court has held that the sorts of generally applicable administrative and record keeping

requirements imposed by tax laws may be imposed on religious organizations without violating the Establishment Clause. See *Jimmy Swaggart Ministries*, 493 U.S. at 394-97 (state sales and use tax); *Hernandez*, 490 U.S. at 695-98 (federal income tax); see also *South Ridge Baptist Church*, 911 F.2d at 1210 (workers' compensation program); *Bethel Baptist Church*, 822 F.2d at 1340-41 (social security tax). The normal incidents of collecting federal employment taxes simply do not involve the intrusive government participation in, supervision of, or inquiry into religious affairs that is necessary to find excessive entanglement. See *Jimmy Swaggart Ministries*, 493 U.S. at 394-96; *Hernandez*, 490 U.S. at 696-98. Even the somewhat more intrusive tax foreclosure ordered in this case is a discrete event involving no inquiry into religious matters and, as such, raises no excessive entanglement concerns. Accordingly, there is no merit to IBT's Establishment Clause challenge to the federal employment tax laws.

C. Other Arguments

Finally, IBT makes a pair of arguments that rely on what it contends are the general principles behind the religion clauses of the First Amendment. First, IBT argues that applying general regulatory laws to it would abridge the religious liberty guaranteed by the religion clauses. As noted above, however, there is no basis under either the Free Exercise Clause or the Establishment Clause for the argument that neutral, generally applicable, minimally intrusive tax laws (like the ones at issue here) cannot be applied to religious organizations. IBT asserts that *Church of the Holy Trinity v. United States*, 143 U.S. 457 (1892), and *Corporation of the Presiding Bishop of the Church*

of Jesus Christ of Latter-day Saints v. Amos, 483 U.S. 327 (1987), are to the contrary, but it is mistaken. In *Holy Trinity*, the Court declined to interpret an immigration statute to prohibit the immigration of a Catholic priest, in part on the ground that it believed it unlikely that Congress would have intended such a prohibition in light of the nation's strong religious tradition. 143 U.S. at 465-72. The case had nothing to do with the constitutionality of general regulatory laws, and there is no question in this case regarding the intended scope of the federal employment tax laws. In *Amos*, the Court upheld against an Establishment Clause challenge an exception for religious organizations to Title VII's prohibition on religious discrimination in employment. 483 U.S. at 334-39. Just as with the property tax exemption in Walz, however, the fact that the Establishment Clause allows exceptions for religious entities does not mean that such exceptions are required. Put simply, applying neutral, generally applicable, minimally intrusive tax laws to religious entities does not unconstitutionally abridge the religious liberty guaranteed by the First Amendment.

Second, IBT takes issue with the district court's characterization of it as an unincorporated religious society under Indiana law. IBT contends that it is a "New Testament Church," not an unincorporated religious society, and that by characterizing it as such an entity, the district court "established" a state church and imposed on IBT a form of worship contrary to its beliefs. The district court did neither of these things. It simply described the legal (not religious) nature of an already existing church. In any event, it does not matter what sort of entity IBT is.

Whatever it is, it must comply with the federal employment tax laws. Thus, IBT's objection to the district court's characterization of it is both without merit and beside the point.

III

IBT's challenges to the application of the federal employment tax laws to it are without merit. Accordingly, we AFFIRM the judgment of the district court.

A true Copy:

Teste:

Clerk of the United States Court of Appeals for the Seventh Circuit

IN THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF INDIANA INDIANAPOLIS DIVISION

UNITED STATES OF AMERICA, Plaintiff, v. INDIANAPOLIS BAPTIST TEMPLE, GREGORY JEROME DIXON, and NBD BANK, INC., Defendants.	)	Case No. IP98-0498 C-B/S

JUDGMENT ORDER INCLUDING FORECLOSURE AND SALE

In accordance with the terms of this Court's "Entry Granting Plaintiff's Motion for Summary Judgment" of June 29, 1999,

IT IS ORDERED THAT:

1. Judgment is entered in favor of the United States and against Indianapolis Baptist Temple in the sum of $5,319,750.27, plus interest and other additions pursuant to law accruing from and after July 27, 1998.

2. The federal tax lien of the United States on all property and rights to property of Indianapolis Baptist Temple is foreclosed on the real property located at 2711 South East Street and at 339 West Cragmont Drive, both in Indianapolis, Indiana.

3. In accordance with 26 U.S.C. §§ 7402 and 7403(d), the real property located at 2711 South East Street and 339 West Cragmont Drive, both in Indianapolis, Indiana,

shall be offered for sale by a receiver, the identity and compensation of which shall be established by a future order of this Court, free and clear of any rights, titles, liens, claims or interest of Indianapolis Baptist Temple, NBD Bank, Gregory J. Dixon, or the United States of America. The real property shall be offered for sale subject to confirmation by this Court, and upon such confirmation the United States Marshal shall deliver to the purchaser a quit claim deed.

4. NBD Bank, N.A., now known as Bank One Indiana, N.A., has a lien on the real property located at 2711 South East Street, which lien has priority over the federal tax lien of the United States.

5. The proceeds of the sales of the real property shall be distributed to such parties and in such amounts as provided by law and as set forth by the further order of this Court.

Done at Indianapolis, Indiana, this 10th day of November, 1999.

/s/ Sarah Evans Barker
HON. SARAH EVANS BARKER
Chief Judge, U.S. District Court
Southern District of Indiana

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

UNITED STATES OF AMERICA, Plaintiff, vs. INDIANAPOLIS BAPTIST TEMPLE, GREGORY JEROME DIXON, and NBD BANK, INC., Defendants.	)	CAUSE NO. IP 98-0498-C-B/S

ENTRY GRANTING PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT

Plaintiff United States of America (United States) brings this action against Defendant Indianapolis Baptist Temple (IBT) to reduce federal tax assessments to judgment and to foreclose tax liens.[1] In a January 19, 1999 Entry, we denied Defendant's motion for summary judgment, holding that the First Amendment to the United States Constitution does not bar the application of federal tax laws to Defendant. In the same Entry, we reserved a ruling on Plaintiff's motion for summary judgment in order to allow the parties to submit supplemental briefs regarding whether the tax assessments at issue were actually made against Defendant. We have since received and reviewed the parties' supplemental submissions. For the reasons discussed below and in our January 19, 1999

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[1] This Entry does not address Plaintiff's claims against Defendants Gregory Jerome Dixon and NBD Bank, Inc.

Entry, we must *grant* Plaintiff's motion for summary judgment.

I. Background

In March 1950, the independent Baptist church known as "Indianapolis Baptist Temple" was founded. The church began operating at 2711 South East Street, in Indianapolis, Indiana, and has been at that location ever since. Over the years, the church has used various entities to manage its affairs. Until May 22, 1983, a not-for-profit corporation named "Indianapolis Baptist Temple, Inc." (hereinafter, "the corporation") managed the church's affairs and ministries. (Defendant's Exhibit B at 8). The corporation obtained federal Employer Identification Number 35-1037016, withheld employment taxes from the wages of its workers, filed employment tax returns, and paid employment taxes to the federal government. (Defendant's Exhibit A at 3; Defendant's Exhibit B at 8).

In 1983, the church membership decided to manage the church's affairs as an unincorporated religious society, rather than as a corporation. As part of the transition, the corporation's assets were transferred to the unincorporated religious society and the articles of incorporation were amended to limit the corporation's purpose to "continu[ing] any litigation in which the corporation may have been involved prior to 6-26-83 and any future litigation and to continue such financial obligations and legal responsibilities as have not been assumed by Indianapolis Baptist Church, an unincorporated Church." (Exhibit 2 to Dixon Dec.). The next year, the articles of incorporation

were again amended to change the name of the corporation from Indianapolis Baptist Temple, Inc. to "Not a Church, Inc." Two years later, on July 31, 1989, Not a Church, Inc. was administratively dissolved by Indiana's Secretary of State.

Meanwhile, in May of 1987, Indianapolis Baptist Temple, the unincorporated religious society (hereinafter, "the society"), transferred all of its assets to Gregory Jerome Dixon, the church's pastor, as trustee.[2] After February 15, 1994, the society held title to real property located in Indianapolis, Indiana and known as 2711 South East Street and 339 West Cragmont Drive. (Government's Exhibits C, D). The society never obtained a federal Employer Identification Number.

On January 13, 1994, the Internal Revenue Service (IRS) sent a letter addressed to "Indianapolis Baptist Temple" at 2711 S. East St., Indianapolis, Indiana. (Exhibit E, attached to Declaration of Douglas Snoeyenbos). That letter stated that (1) the IRS had found no record that the Indianapolis Baptist Temple had filed Form 941 quarterly employment tax returns for the periods 1987 through 1993, (2) enclosed 941 Forms prepared by the IRS for each of those periods, and (3) asked that the taxpayer sign the forms and send them back if the taxpayer agreed that the amounts on those returns were accurate. The amounts of wages and taxes shown on the 941 Forms were based on documents labeled as "cash statements" for "Baptist Temple" for the years 1987 through 1992. (Plaintiff's Exhibit

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[2] Dixon is a co-defendant in this action, but is not a party to the summary judgment motion at issue.

A, attached to Declaration of Keith Clayton). The January 13, 1994 letter was returned to the IRS marked "Return improper venue – federal Regional venue denied." (Defendant's Exhibit A, Appendix H).

On February 15, 1994, the IRS made an assessment of tax, interest, and penalties totaling $3,498,355.62 against " 'Indianapolis Baptist Temple" for unpaid social security and federal income tax withholding, including interest, delinquency penalties, failure to deposit penalties, and failure to pay penalties for the years spanning 1987 through 1992. The IRS identified the assessed entity with federal employer identification number 35-1037016. Despite notice and demand, Defendant IBT has not paid the social security and income tax withholding liabilities at issue. Together with interest and other statutory additions that have accrued, there remains due and owing to the United States with respect thereto, the sum of $5,319,750.27, plus interest and other additions pursuant to law accruing after July 26, 1998. (Keith Clayton Declaration). The United States now seeks payment of the outstanding debt from Indianapolis Baptist Temple, the unincorporated religious society.

II. Discussion

The sole issue before us is whether the tax assessment relied upon by the United States was, in fact, made against Defendant. The United States acknowledges that the Employer Identification Number used to identify the assessed entity on the tax forms incorrectly identified Indianapolis Baptist Temple, Inc. ("the corporation") as

the assessed entity, rather than Defendant IBT ("the society"). The United States nevertheless contends that (1) there is no requirement that an identifying number be used in making an assessment, (2) the use of an incorrect identifying number does not invalidate an assessment, and (3) the records supporting the assessment in this case demonstrate that it was made against Defendant, not the defunct corporation.

Defendant, in response, does not directly refute any of Plaintiff's contentions. Nor does it claim to have paid any federal taxes during the time period at issue (1987-1992). Rather, Defendant simply reiterates its previously advanced contention that IBT is a form of entity called a New Testament Church, which is not subject to federal tax laws. We flatly rejected this argument in our January 19, 1999 Entry as failing to recognize the legal nature of Defendant, which is that of an unincorporated association. (Court's January 19, 1999 Entry at page 10 n.8; *see also Hanson v. St. Luke's United Methodist Church*, 704 N.E.2d 1020, 1022 n.5 (Ind.1998)). While Defendant, of course, has the right to be a New Testament Church, it does not have the right to foreclose the government from taxing it.

After filing its Response to Plaintiff's supplemental brief, Defendant requested, and received, permission from this Court to file an additional brief. Unfortunately, Defendant's "additional brief" also fails to address the heart of the matter – whether the assessment was made against Defendant notwithstanding the presence of the corporation's identification number. Instead, Defendant simply points out that it notified the IRS in the Spring of 1994 (post-assessment) that the employer identification

number used in the assessment belonged to the corporation.

Defendant fails to explain the relevance of such notification. Defendant is not relieved of its tax liabilities simply because the IRS mistakenly used the corporation's identification number on Defendant's tax assessment.[3] The record clearly establishes that, despite that error, the assessment at issue was against Defendant and Defendant knew it. No showing has been made that Defendant has been prejudiced in any way by the IRS's use of the corporation's identification number. The relevant IRS inquiries and notices were sent to "the Indianapolis Baptist Temple" at 2711 South East Street, Indianapolis, Indiana. That is Defendant's address and the same name and address on the tax assessment at issue. In addition, Gregory Dixon, the pastor of IBT, had ongoing correspondence with the IRS, which reflects his understanding that the assessment was made against Defendant. Moreover, there is no evidence that the presence of the identification number caused any serious confusion about who was being assessed. The corporation had been dissolved for years and the tax assessments clearly reflect liabilities arising out of Defendant's operations.

Our conclusion is consistent with the Eastern District of California's decision in *Moore v. United States*, No. S-92-1065, 1993 WL 414711 (E.D.Cal. 1993). In that case. Richard A. Moore, Sr. argued that the tax assessment on

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[3] Although supporting records must provide identification of the taxpayer, there is no requirement that an identifying number must be used as part of that identification. *See* 26 U.S.C. § 6203; 26 C.F.R. § 301.6203.1.

which the United States relied for its claim against him was invalid because he was improperly identified. The IRS form used to request the assessment was in the name "Richard A. Moore," (no Sr. or Jr.), and used the social security number of the defendant's son. The court rejected Moore's argument, holding that because the taxpayer was properly identified by name and address, the fact of the incorrect social security number was insignificant.

Defendant apparently believes it can evade federal tax law by metamorphosing into various different forms of entity. On this, it is sadly mistaken. Although Defendant's tactics may have resulted in enough confusion to cause the IRS to use an incorrect employer identification number in assessing its tax liabilities, such tactics do not save Defendant from the harsh ramifications it now faces as a result of years of tax evasion. The record is clear that Defendant has failed to pay its tax liabilities and owes the United States $5,319,750.27 plus interest and other additions pursuant to law accruing after July 27, 1998. Accordingly, we *grant* Plaintiff's motion for summary judgment.

Plaintiff also requests that we foreclose on its tax liens against Defendant's property. It is undisputed that Defendant owns the real property at 2711 South East Street and at 339 West Cragmont Drive, both in Indianapolis, Indiana, and that Plaintiff has liens on those properties based on Defendant's outstanding tax liabilities. The government is entitled to take the necessary and appropriate steps to collect on its judgment. Consistent with our summary judgment ruling, Plaintiff may foreclose on those properties, pursuant to 26 U.S.C.

§ 7403. Per Plaintiff's request, however, we delay entering an Order of Foreclosure to allow the government to tender a proposed Order.

III. Conclusion

For the reasons outlined in this Entry and incorporating as well our January 19, 1999 Entry, Plaintiff's motion for summary judgment is *granted* because (1) the assessment at issue was unmistakably asserted against Defendant, despite the erroneous use of another entity's employer identification number; and (2) the First Amendment does not immunize Defendant from the obligations imposed upon it by federal tax laws.

It is so ORDERED this 29th day of June 1999.

/s/ Sarah Evans Barker
SARAH EVANS BARKER,
CHIEF JUDGE
United States District Court
Southern District of Indiana

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

UNITED STATES OF AMERICA, Plaintiff, vs. INDIANAPOLIS BAPTIST TEMPLE, GREGORY JEROME DIXON, and NBD BANK, INC., Defendants.	)	CAUSE NO. IP 98-0498-C-B/S

ENTRY ADDRESSING PLAINTIFF'S MOTION FOR PARTIAL SUMMARY JUDGMENT AND DEFENDANT INDIANAPOLIS BAPTIST TEMPLE'S MOTION FOR SUMMARY JUDGMENT

This matter comes before the Court on Plaintiff United States of America's (United States) and Defendant Indianapolis Baptist Temple's (IBT) cross motions for summary judgment on Plaintiff's claim that IBT owes the United States over $5,319,750.27 for unpaid social security and federal income tax withholding.[1] IBT does not dispute the accuracy of the tax assessment figures. Rather, it contends that (1) the First Amendment bars the application of federal tax laws to IBT, and (2) the tax assessments relied upon by the United States were not made against IBT.[2] For the reasons discussed below,

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[1] Hereinafter, we will refer collectively to social security taxes and federal income taxes as "federal taxes" or "federal tax laws."

[2] IBT's request for oral argument is *DENIED*.

Defendant's motion for summary judgment on First Amendment grounds is *DENIED* because the federal tax system as applied to IBT does not violate either the Free Exercise Clause or the Establishment Clause of the First Amendment. We reserve further rulings on the motions for summary judgment pending supplemental briefing by the parties.

I. BACKGROUND

A) THE CHURCH

IBT is an independent Baptist church, defining itself as a New Testament Church. One of its principle tenants is that Jesus Christ is the sole and exclusive head of the church. The church was founded in March 1950 and was subsequently incorporated as a not-for-profit corporation on October 27, 1950. IBT began operating at 2711 South East Street, in Indianapolis, Indiana, and has been at that location ever since.

As a not-for-profit corporation, IBT claimed tax exempt status and obtained federal employer identification number 35-1037016. Thereafter, in 1983, the church membership decided to manage the church's affairs as an unincorporated religious society, rather than as a corporation. As part of the transition, the corporation's assets were transferred to the unincorporated religious society and the articles of incorporation were amended to limit the corporation's purpose to "continu[ing] any litigation in which the corporation may have been involved prior to 6-26-83 and any future litigation and to continue such financial obligations and legal responsibilities as have not

been assumed by Indianapolis Baptist Church, an unincorporated Church." (Exhibit 2 to Dixon Dec.). The next year, the articles of incorporation were again amended to change the name of the corporation from Indianapolis Baptist Temple, Inc. to "Not a Church, Inc." Two years later, on July 31, 1989, Not a Church, Inc. was administratively dissolved by Indiana's Secretary of State.

Meanwhile, in May of 1987, the unincorporated religious society known as Indianapolis Baptist Temple transferred all of its assets to Gregory Jerome Dixon, the church's pastor, as trustee.[3] After February 15, 1994, the society held title to real property located in Indianapolis, Indiana and known as 2711 South East Street and 339 West Cragmont Drive. (Government's Exhibits C, D).

B) TAX ASSESSMENTS

On February 15, 1994, the Internal Revenue Service (IRS) made an assessment of tax, interest, and penalties totaling $3,498,355.62 against "Indianapolis Baptist Temple" for unpaid social security and federal income tax withholding, including interest, delinquency penalties, failure to deposit penalties, and failure to pay penalties for the years spanning 1987 through 1992. The IRS identified the assessed entity with federal employer identification number 35-1037016. Despite notice and demand, IBT has not paid the social security and income tax withholding liabilities at issue. Together with interest and other statutory additions that have accrued, there remains due

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[3] Dixon is a co-defendant in this action, but is not a party to the summary judgment motions at issue.

and owing to the United States with respect thereto, the sum of $5,319,750.27, plus interest and other additions pursuant to law accruing after July 26, 1998. (Keith Clayton Declaration).

II. SUMMARY JUDGMENT STANDARDS

Summary judgment is appropriate if "the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Fed.R.Civ.Pro. 56(c). A genuine issue of material fact exists if there is sufficient evidence for a jury to return a verdict in favor of the nonmoving party on the particular issue. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248, 106 S.Ct. 2505, 2510, 91 L.Ed.2d 202 (1986); *Methodist Med. Ctr. v. American Med. Sec., Inc.*, 38 F.3d 316, 319 (7th Cir. 1994). "This standard is applied with added rigor in employment discrimination cases, where intent and credibility are crucial issues." *Sample v. Aldi Inc.*, 61 F.3d 544, 547 (7th Cir. 1995).

In resolving a motion for summary judgment, a court must draw all reasonable inferences in the light most favorable to the non-movants. *Patel v. Allstate Ins. Co.*, 105 F.3d 365, 366 (7th Cir. 1997); *Spraying Sys. Co. v. Delavan, Inc.*, 975 F.2d 387, 392 (7th Cir. 1992). However, we must not "ignore facts in the record merely because they are unfavorable. . . . [A non-movant] gets the, benefit of the doubt only if the record contains competent evidence on both sides of a factual question." *Patel*, 105 F.3d at 366. Thus, if genuine doubts remain, and a reasonable fact-

finder could find for the party opposing the motion, summary judgment is inappropriate. *Shields Enters., Inc. v. First Chicago Corp.*, 975 F.2d 1290, 1294 (7th Cir. 1992); *Wolf v. City of Fitchburg*, 870 F.2d 1327, 1330 (7th Cir. 1982).

III. DISCUSSION

Plaintiff asks us to enter judgment in its favor and against IBT for over $5,319,750.27 for unpaid social security and federal income tax contributions, and to foreclose on tax liens it has against IBT's real property. Defendant rejoins that (1) the First Amendment bars Plaintiff's claims, and (2) it is not the entity assessed by the IRS.

A) THE FIRST AMENDMENT DOES NOT BAR PLAINTIFF'S CLAIM

IBT first seeks refuge in the First Amendment, maintaining that the federal tax system violates the First Amendment's free exercise and establishment clauses by (1) forcing IBT to pay taxes, in contravention of their basic religious convictions, and (2) giving preference to religions whose doctrine is not offended by the federal tax system.[4] Unfortunately for IBT, the United States Supreme Court does not share its creative interpretations

[4] Plaintiff concedes that the federal tax scheme conflicts with IBT's religious doctrine.

of the First Amendment, making resolution of this issue rather straightforward.[5]

The Supreme Court in *United States v. Lee*, 455 U.S. 252, 102 S.Ct. 1051 (1982), addressed whether social security taxation violated the Free Exercise Clause of the First Amendment. In *Lee*, a member of the Old Order Amish, who believe that there is a religiously based obligation to provide for fellow members the kind of assistance contemplated by the social security system, employed several other Amish as workers on his farm and in his carpentry shop. For several years, the Amish employer refused to withhold social security taxes from his employees' pay or to pay the employer's share of the tax. After the IRS assessed the employer for the unpaid taxes, he paid a portion thereof and then sued for a refund, claiming imposition of the tax violated the First Amendment. On direct appeal, the Supreme Court reversed the district court's ruling that the imposition of the social security tax was unconstitutional.

In reaching its conclusion, the Court recognized that compulsory participation in the social security system may "interfere[ ] with the free exercise rights of [religious groups]." *United States v. Lee*, 455 U.S. at 257, 102 S.Ct. at

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[5] While we do not share IBT's belief that "[t]his case is the most important and legally significant case involving the Religious Liberty Clause of the First Amendment of the Constitution of the United States since its adoption by Congress on August 20, 1789," we do recognize its importance and significance to the parties.

1055. The Court also recognized, however, that the state may justify such an infringement by demonstrating that the infringement is essential to the accomplishment of an overriding governmental interest. *Id.* at 257-58, 102 S.Ct. at 1055. The Court then found that the broad public interest in maintaining certain sound tax systems is such an interest. *Id.* at 260, 102 S.Ct. at 1056-57. After noting the importance of and strong similarity between the income tax and social security tax systems, the Court concluded that the broad public interest in the maintenance of these systems was of such a high order that religious belief in conflict with the payment of the respective taxes provides no constitutional basis for resisting them. *Id.* Thus, at least with respect to the payment of income taxes and social security taxes, the Court has determined that the balance between the private interest in religious freedom and the government interest in tax collection and maintenance of a functioning tax system must be struck in favor of the governmental interest. *See also Hernandez v. Commissioner*, 490 U.S. 680, 699-700, 109 S.Ct. 2136, 104 L.Ed.2d 766 (1989).[6]

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[6] IBT attempts to distinguish all of the applicable case law by pointing out that none of the cases involve a New Testament Church. For the Court's purposes, this is a distinction without a difference. We find no reason not to apply the clear principles set forth by the Supreme Court to IBT simply because it designates itself as a New Testament Church.

Lee addresses the same issue now raised by IBT. We are bound by *Lee*[7] and, thus, must *DENY* IBT's motion for summary judgment on Free Exercise grounds.

IBT's Establishment Clause challenge also falls flat. To pass muster under the Establishment Clause, the tax system must have a secular legislative purpose, its primary purpose must neither advance nor inhibit religion, and it must not foster an excessive entanglement with religion. *Lemon v. Kurtzman*, 403 U.S. 602, 612-13, 91 S.Ct. 2105, 2111 (1971). The Supreme Court in *Jimmy Swaggart Ministries v. Board of Equalization of California*, 493 U.S. 378, 394, 110 S.Ct. 688, 698 (1990), held that "it is undeniable that a generally applicable tax has a secular purpose and neither advances nor inhibits religion." Thus, the only issue remaining is whether the federal tax laws foster an excessive entanglement with religion.

The Court's decision in *Jimmy Swaggart Ministries* guides us once again, holding that "generally applicable administrative and record keeping regulations may be

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[7] The Supreme Court in *Employment Division, Depart. of Human Resources of Oregon v. Smith*, 494 U.S. 872, 110 S.Ct. 1595 (1990), abandoned the balancing test employed by *Lee* and announced the less strenuous rule that a law that is neutral and of general applicability need not be justified by a compelling governmental interest even if the law has the incidental effect of burdening a particular religious practice. Under *Smith*, IBT's Free Exercise Clause argument is even less compelling than under *Lee*. Nevertheless, in 1994, the Religious Freedom Restoration Act, 42 U.S.C. §2000bb-1, was passed, superseding *Smith* by requiring both federal and state laws to comply with the balancing test, as set forth in *Lee* and *Sherbert v. Verner*, 374 U.S. 398, 83 S.Ct. 1790 (1963). Hence, *Lee* is the standard today and we must follow it.

imposed on religious organizations without running afoul of the Establishment Clause." *Id.* at 395. Such regulations are, at the very least, as entangling as the federal tax laws. In fact, carving out an exception to account for conflicting religious beliefs would result in the very entanglement that IBT seeks to prevent, since it would necessarily require the IRS to examine the sincerity of a person's religious beliefs.

This view is consistent with the Third Circuit's decision in *Bethel Baptist Church v. United States*, 822 F.2d 1334 (3rd Cir. 1987). In that case, Bethel Baptist, an independent Baptist church, claimed that social security taxation violated the Establishment Clause of the First Amendment because it required governmental supervision and inspection of the Church's records. The Third Circuit rejected the church's argument, holding that the resulting entanglement between the government and the church was minimal, at best.

Accordingly, consistent with *Bethel Baptist* and *Jimmy Swaggart Ministries*, Defendant's motion for summary judgment on Establishment Clause grounds is *DENIED* because the federal tax system has a secular purpose, neither advances nor inhibits religion, and does not foster an excessive entanglement with religion.

B) MORE DEVELOPMENT NECESSARY TO DETERMINE WHETHER DEFENDANT IS THE ASSESSED ENTITY

The final issue is not as clear as the First Amendment questions. Defendant contends that the tax assessments relied upon by the Government in this action were not

made against it. In support of its contention, Defendant points out that the IRS identified the assessed entity with federal employer identification number 35-1037016. That identification number was originally obtained by the corporation called Indianapolis Baptist Temple, which later changed its name to Not a Church, Inc. and, ultimately, was administratively dissolved in 1987. Defendant contends that it is not that corporation; rather, it is Indianapolis Baptist Temple, the unincorporated religious society.[8] Thus, it is not liable for the assessed taxes.

Defendant obviously is not the corporation that obtained the identification number at issue. That corporation has been dissolved and, in fact, did not exist during the time period when the taxes were assessed – 1987 to 1994.[9] Rather, Defendant is an unincorporated religious society which was created in 1983 by the church membership to manage church affairs and hold title to church property. The society was given all the corporation's assets and apparently took over the corporation's role of managing the church. From 1983 to 1987, both the society and the corporation co-existed, with the society managing church affairs and the corporation's role limited to continuing any litigation in which it was involved. In 1983. the two entities shared the name Indianapolis Baptist Temple until the corporation changed its name the

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[8] IBT even suggests that it is neither a corporation nor an unincorporated religious society. Rather, it is a New Testament Church and nothing more. This position fails to recognize the legal nature of IBT, which the record establishes to be that of an unincorporated religious society.

[9] Further, Defendant is not identified as an incorporated entity in the caption.

following year to Not a Church, Inc. While the society apparently managed church affairs, it never obtained a federal employer identification number.

The tax assessments at issue probably were intended to be made against the managing entity of the church, i.e. Defendant. We glean this from reviewing the actual assessments and examining the items listed. The Government, however, glosses over the issue by simply arguing that Defendant and the assessed taxpayer constitute the same entity because they used the same name at one time. The Government does not even acknowledge the distinction between the corporation and the society. Thus, we are left with a slim factual record and no explanation by the Government for using the corporation's identification number in identifying the assessed taxpayer. We decline to rule on this issue under these circumstances.

Although Defendant may not be the same entity assessed by the IRS, we must note that Defendant nonetheless could be held liable for the assessed taxes. Under Indiana law, a corporate entity generally is considered distinct, except when its separateness is abused and yields a result contrary to the aim of the law. *Winkler v. V.G. Reed & Sons, Inc.*, 638 N.E.2d 1228, 1232 (Ind.1994). In such a case, the court may disregard the corporate entity and assess liability appropriately. *Id.* Some courts have found the inability of the government to satisfy a delinquent income tax obligation to form a basis for disregarding a corporate entity. *See G.M. Leasing Corp. v. United States*, 514 F.2d 935 (10th Cir. 1975), *rev'd in part on other grounds*, 429 U.S. 338, 97 S.Ct. 619 (1977).

The facts of this case may ultimately justify such action. The corporation and society appear to have many similarities, including the same people, facilities and assets. However, we are simply without sufficient facts to rule on this issue, and thus, invite the parties to address it in supplemental briefing.

IV. CONCLUSION

For the reasons discussed above, we *DENY* Defendant's Motion for Summary Judgment on First Amendment grounds because the federal tax system does not violate either the Free Exercise Clause or the Establishment Clause of the First Amendment. We reserve further rulings on the pending summary judgment motions to allow supplemental briefing regarding whether the tax assessments relied upon by the Government were made against IBT and, if not, whether IBT nonetheless should be held liable for the assessed taxes. The United States is allowed 30 days from the date of this Entry to file a brief on these issues; IBT is allowed 20 days to file a responsive brief. The United States will have an additional 10 days to file a reply.

It is so ORDERED this 19th day of January 1999.

/s/ Sarah Evans Barker
SARAH EVANS BARKER,
CHIEF JUDGE
United States District Court
Southern District of Indiana

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(2)

Supreme Court, U.S.
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No. 00-761

In the Supreme Court of the United States

INDIANAPOLIS BAPTIST TEMPLE, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

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QUESTION PRESENTED

Whether the provisions of the Internal Revenue Code that require petitioner (i) to pay generally applicable taxes to fund social security and medicare and (ii) to withhold social security, medicare, and income taxes from the wages of its employees violate the religion clauses of the First Amendment.

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In the Supreme Court of the United States

OCTOBER TERM, 2000

No. 00-761

INDIANAPOLIS BAPTIST TEMPLE, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 1-11) is reported at 224 F.3d 627. The opinions of the district court (Pet. App. 15-36) are reported at 61 F.Supp.2d 831 and 61 F.Supp.2d 836.

JURISDICTION

The judgment of the court of appeals was entered on August 14, 2000. The petition for a writ of certiorari was filed on November 13, 2000 (a Monday). The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

1. Petitioner describes itself as a New Testament Church. Petitioner was founded in 1950 and operated as a not-for-profit corporation until 1983, when it became an unincorporated religious society. Pet. App. 2, 16. In 1986, petitioner renounced its status as an unincorporated religious society. *Id.* at 2. Petitioner states that its central tenet is the absolute sovereignty of the New Testament Church under the Lordship of Jesus Christ as the head of the Church and that its doctrine requires the complete separation of the Church from the State (Pet. 9, 14).

2. The Internal Revenue Code imposes various obligations on employers. To fund social security and medicare programs, 26 U.S.C. 3111 imposes an excise tax on employers equal to a percentage of the wages paid to employees. 26 U.S.C. 3111(a), (b). In addition, employers are required to withhold from the wages of their employees the social security and medicare taxes imposed directly on employees by 26 U.S.C. 3101(a) and (b). See 26 U.S.C. 3102(a). Employers are similarly required to withhold amounts representing the normal income tax imposed by 26 U.S.C. 1 from the wages of employees. See 26 U.S.C. 3402. [1] Employers are required to pay over to the United States the amount of taxes thus withheld. 26 U.S.C. 3102(b), 3403.

Petitioner did not file federal employment returns for any quarter during the years 1987 through 1993 and did not pay any federal employment taxes for those quarters. Pet. App. 2. When, after notice from the Internal Revenue Service, petitioner continued to fail

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[1] Pursuant to 26 U.S.C. 3301, employers generally are also liable for a tax that funds a federal-state unemployment compensation program. Such taxes are not at issue in this case.

to file returns, the Service prepared returns for petitioner pursuant to 26 U.S.C. 6020(b). These returns were then sent to petitioner so that petitioner could check the accuracy of the amounts stated on the returns. Pet. App. 2-3. After petitioner did not submit any corrections within the time requested, the Service assessed tax, interest, and additions to tax totaling $3,498,355.62 and sent notice and demand for payment to petitioner. *Id.* at 3.

3 After petitioner refused to pay the amounts assessed, the government commenced this action to reduce the assessments to judgment and to foreclose on two parcels of real estate owned by petitioner. Pet. App. 3. The parties filed cross motions for summary judgment. Petitioner did not dispute the accuracy of the tax assessment figures. *Id.* at 24. Instead, petitioner argued that it was not liable for these taxes on the theory that (i) the religion clauses of the First Amendment of the Constitution barred any application of the federal tax laws to petitioner and (ii) the taxes had not in fact been assessed against it. *Ibid.*

a. In an order dated January 19, 1999, the district court denied petitioner's motion for summary judgment to the extent that it was based on First Amendment grounds. The district court reasoned that "the United States Supreme Court does not share [petitoner's] creative interpretations of the First Amendment, making resolution of this issue rather straightforward." Pet. App. 28-29 (footnote omitted). The court noted that this Court's decision in *United States* v. *Lee*, 455 U.S. 252 (1982), disposed of petitioner's argument under the Free Exercise Clause of the First Amendment. [2] Pet.

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[2] The court also noted that in *Employment Division, Department of Human Resources* v. *Smith*, 494 U.S. 872 (1990), the Court

App. 29-31. The court stated that, "at least with respect to the payment of income taxes and social security taxes, the [Supreme] Court has determined that the balance between the private interest in religious freedom and the government interest in tax collection and maintenance of a functioning tax system must be struck in favor of the governmental interest." *Id.* at 30. The court rejected petitioner's attempt to distinguish this established case law on the basis that it was a "New Testament Church." The court stated that there was "no reason not to apply the clear principles set forth by the Supreme Court to [petitioner] simply because it designates itself as a New Testament Church." *Id.* at 30 n.6.

The district court also rejected petitioner's arguments under the Establishment Clause of the First Amendment. Citing *Lemon* v. *Kurtzman*, 403 U.S. 602, 6126-13 (1971), the court first observed that, "[t]o pass muster under the Establishment Clause, the tax system must have a secular legislative purpose, its primary purpose must neither advance nor inhibit religion, and it must not foster an excessive entanglement with religion." Pet. App. 31. The court noted that, because the Court in *Jimmy Swaggart Ministries* v. *Board of Equalization*, 493 U.S. 378, 394 (1990), had held that "it is undeniable that a generally applicable tax has a secular purpose and neither advances nor inhibits

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announced that a less stringent standard than that employed in *Lee* should be applied and that, under that standard, the government's case was even stronger. The court noted, however, that, under the Religious Freedom Restoration Act, 42 U.S.C. 2000bb-1 *et seq.*, which was passed in 1994, both federal and state laws must comply with the tests described in *Lee*. Pet. App. 31 n.7. As to State laws, see *City of Boerne* v. *Flores*, 521 U.S. 507 (1997).

religion," the first two requirements of this test are satisfied here. Pet. App. 31.

The court concluded that another of this Court's holdings in *Jimmy Swaggart Ministries* guided the resolution of the remaining issue. The Court held in that case that "generally applicable administrative and record keeping regulations may be imposed on religious organizations without running afoul of the Establishment Clause." Pet. App. 31-32 (quoting 493 U.S. at 395). The district court concluded that "carving out an exception to account for conflicting religious beliefs would result in the very entanglement that [petitioner] seeks to prevent, since it would necessarily require the IRS to examine the sincerity of a person's religious beliefs." *Id.* at 32. The court also concluded that a decision of the Third Circuit, *Bethel Baptist Church* v. *United States*, 822 F.2d 1334 (1987), cert. denied, 485 U.S. 459 (1988), supports its holding in this case. Pet. App. 32.

b. In an order dated June 29, 1999, the district court rejected petitioner's argument that the tax assessments involved in this case were not made against it. The court stated that "[t]he record clearly establishes that * * * the assessment at issue was against [petitioner] * * *." Pet. App. 20. Having rejected both of petitioner's contentions, the court granted summary judgment to the government. *Id.* at 22.

4. The court of appeals affirmed. Pet. App. 1-11. Petitioner did not renew on appeal its contention that tax assessments had not been made against it. Instead, petitioner relied solely on its assertion that the religion clauses of the First Amendment prevent the government from assessing taxes against it. *Id.* at 3. The court of appeals held that petitioner's "challenges to the

application of the federal employment tax laws to it are without merit." *Id.* at 11.

In rejecting petitioner's argument based on the Free Exercise Clause, the court of appeals held that "neutral laws of general application that burden religious practices do not run afoul of the Free Exercise Clause" (Pet. App. 4) and that petitioner did "not (and, in any event, could not) contest the government's characterization of the federal employment tax laws as neutral laws of general application" (*id.* at 5).

The court next concluded that petitioner's arguments based on the Religious Freedom Restoration Act (RFRA), 42 U.S.C. 2000bb-1 *et seq.*, were unavailing. Pet. App. 5-6. The court explained that "[i]n several pre-*Smith* Free Exercise challenges to the application of federal tax laws, the Supreme Court and various courts of appeals concluded both that maintaining a sound and efficient tax system is a compelling government interest and that the difficulties inherent in administering a tax system riddled with judicial exceptions for religious employers make a uniformly applicable tax system the least restrictive means of furthering that interest." *Id.* at 6.[3] The court observed that "[t]he cases that have been decided under RFRA reach the same conclusion." *Ibid.*[4] The court stated that "[w]e

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[3] On this issue, the court of appeals cited *Hernandez* v. *Commissioner*, 490 U.S. 680, 698-700 (1989); *United States* v. *Lee*, 455 U.S. 252, 258-260 (1982); *South Ridge Baptist Church* v. *Industrial Comm'n*, 911 F.2d 1203, 1206-1210 (6th Cir. 1990), cert. denied, 498 U.S. 1047 (1991); and *Bethel Baptist Church* v. *United States*, 822 F.2d at 1338-1339.

[4] The RFRA cases cited by the court were *Browne* v. *United States*, 176 F.3d 25, 26 (2d Cir. 1999), cert. denied, 120 S. Ct. 934 (2000); *Adams* v. *Commissioner*, 170 F.3d 173, 175-180 (3d Cir. 1999), cert. denied, 120 S. Ct. 95 (2000); and *Droz* v. *Commissioner*,

find this authority persuasive and see no reason to reach a different conclusion." *Id.* at 7. The court of appeals also concluded that there was no basis for petitioner's claim that these decisions should be distinguished on the ground that they involved "a state-recognized legal entity, whereas [petitioner] is simply a 'New Testament Church.'" *Ibid.*

The court of appeals then rejected petitioner's arguments based upon the Establishment Clause and explained that petitioner has erred in relying on *Walz* v. *Tax Commission*, 397 U.S. 664 (1970) (Pet. App. 8-9):

> While taxing religious organizations involves greater government entanglement than not taxing them does, this greater entanglement is not necessarily unconstitutionally excessive. In fact, the Supreme Court has held that the sorts of generally applicable administrative and record keeping requirements imposed by tax laws may be imposed on religious organizations without violating the Establishment Clause. See *Jimmy Swaggart Ministries*, 493 U.S. at 394-97 (state sales and use tax); *Hernandez*, 490 U.S. at 695-98 (federal income tax); see also *South Ridge Baptist Church*, 911 F.2d at 1210 (workers' compensation program); *Bethel Baptist Church*, 822 F.2d at 1340-41 (social security tax). The normal incidents of collecting federal employment taxes simply do not involve the intrusive government participation in, supervision of, or inquiry into religious affairs that is necessary to find excessive entanglement. See *Jimmy Swaggart Ministries*, 493 U.S. at 394-96; *Hernandez*, 490 U.S. at 696-98. Even the somewhat more intrusive tax

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48 F.3d 1120, 1122-1125 (9th Cir. 1995), cert. denied, 516 U.S. 1042 (1996).

> foreclosure ordered in this case is a discrete event involving no inquiry into religious matters and, as such, raises no excessive entanglement concerns. Accordingly, there is no merit to [petitioner's] Establishment Clause challenge to the federal employment tax laws.

Finally, the court rejected petitioner's assertion that its claims were supported by "general principles behind the religion clauses of the First Amendment." Pet. App. 9. The court concluded that petitioner erred in relying on *Rector of the Holy Trinity Church* v. *United States*, 143 U.S. 457 (1892), because "[t]he case had nothing to do with the constitutionality of general regulatory laws, and there is no question in this case regarding the intended scope of the federal employment tax laws." Pet. App. 10. The court similarly rejected petitioner's reliance on *Corporation of the Presiding Bishop of the Church of Jesus Christ of Latter-day Saints* v. *Amos*, 483 U.S. 327 (1987). The court explained that (Pet. App. 10a):

> the fact that the Establishment Clause allows exceptions for religious entities does not mean that such exceptions are required. Put simply, applying neutral, generally applicable, minimally intrusive tax laws to religious entities does not unconstitutionally abridge the religious liberty guaranteed by the First Amendment.

The court disagreed with petitioner's assertion that, in noting that petitioner was an unincorporated religious society, the decision of the district court established a state church. Pet. App. 10-11. The court explained that the district court "simply described the legal (not religious) nature of an already existing church." *Id.* at 10. The court added that: "In any event,

it does not matter what sort of entity [petitioner] is. Whatever it is, it must comply with the federal employment tax laws." *Id.* at 10-11.

ARGUMENT

The decision of the court of appeals is correct and does not conflict with any decision of this Court or any other court of appeals. Further review is therefore not warranted.

1. The court of appeals correctly held that the application of generally applicable employment tax provisions to petitioner does not violate the religion clauses of the First Amendment. Prior to *Employment Division, Department. of Human Resources of Oregon* v. *Smith*, 494 U.S. 872 (1990), this Court had applied a "compelling interest test" in evaluating Free Exercise claims. In clarifying those decisions in *Smith*, however, the Court concluded that a less stringent standard should be applied. *Id.* at 883-890. In response to *Smith*, Congress enacted RFRA, Pub. L. No. 103-141, 107 Stat. 1488 (codified at 42 U.S.C. 2000bb-1 *et seq.*), which generally reinstates the "compelling interest test" of the pre-*Smith* case law as the standard for evaluating legislation that imposes a substantial burden on the Free Exercise of religion. Pre-*Smith* decisions, such as *Hernandez* v. *Commissioner*, 490 U.S. 680, 699-700 (1989), and *United States* v. *Lee*, 455 U.S. 252, 257-258 (1982), make clear that the employment taxes involved in this case pass muster under the compelling interest test. These cases explain that a substantial burden on the free exercise of religion is "justified by the 'broad public interest in maintaining a sound tax system,' free of 'myriad exceptions flowing from a wide variety of religious beliefs'" (*Hernandez*, 490 U.S. at 699-700 (quoting *Lee*, 455 U.S. at 260)) and hold that "[b]ecause

the broad public interest in maintaining a sound tax system is of such a high order, religious belief in conflict with the payment of taxes affords no basis for resisting the tax" (*Lee*, 455 U.S. at 260). The taxes involved in this case thus satisfy both the constitutional requirements of the Free Exercise Clause and the statutory standards established in RFRA.

These taxes also satisfy the three requirements stated in *Lemon* v. *Kurtzman*, 403 U.S. 602 (1971), and therefore do not violate the Establishment Clause. In *Jimmy Swaggart Ministries* v. *Board of Equalization*, 493 U.S. at 394, the Court concluded that generally applicable taxes (such as those involved in this case) satisfy the first two requirements of *Lemon* because such taxes have a secular legislative purpose and their principal or primary effect neither advances nor inhibits religion. The third requirement of *Lemon*—that "the statute must not foster 'an excessive government entanglement with religion'" (403 U.S. at 613)—is also satisfied by neutral tax laws that are applicable to employers generally. The courts below thus correctly concluded (Pet. App. 11, 29) that the challenged taxes must be upheld under a straightforward application of well-established First Amendment principles.

Petitioner errs in asserting that these well-established principles have no application to a church that has as its central tenet "the absolute sovereignty of the Church under the Lordship of Jesus Christ as the head of the Church" and that adheres to a doctrine that "requires the complete separation of the Church from the state." Pet. 14. This Court has explained that its "holdings do not call for total separation between church and state" and that "[s]ome relationship between government and religious organizations is inevitable." *Lemon* v. *Kurtzman*, 403 U.S. at 614. The

Establishment Clause does not provide a special exemption for one form of church, rather than another, from neutral tax laws of general application.

Furthermore, as the court of appeals pointed out, although "[t]he Free Exercise Clause absolutely protects the freedom to believe and profess whatever religious doctrine one desires," it does not provide "absolute * * * protection for the ability to practice (through the performance or non-performance of certain actions) one's religion." Pet. App. 4. The court of appeals correctly held that the governing constitutional principle in this case is that "neutral laws of general application that burden religious practices do not run afoul of the Free Exercise Clause." *Ibid.*

2. Petitioner errs in contending (Pet. 18) that the decision in this case conflicts with *Murdock* v. *Pennsylvania*, 319 U.S. 105 (1943). In *Murdock*, the Court held unconstitutional a municipal ordinance "which as construed and applied require[d] religious colporteurs to pay a license tax as a condition to the pursuit of their activities." *Id.* at 110. The present case involves a tax on incomes, not a license tax that restricts one's right to follow a chosen profession. Noting that distinction in *Jimmy Swaggart Ministries*, 493 U.S. at 389, this Court expressly limited the scope of *Murdock*, holding that it "appl[ies] only where a flat license tax operates as a prior restraint on the free exercise of religious beliefs." See also *id.* at 390 (noting that, under *Murdock*, "a generally applicable income or property tax * * * may constitutionally be imposed on religious activity").

Petitioner similarly errs in asserting (Pet. 19) that there is a conflict between the decision in this case and *Rector of the Holy Trinity Church* v. *United States*, *supra*. The *Holy Trinity* case involved a question of statutory interpretation—whether a statute that

produces an absurd result if interpreted literally should be given a non-literal interpretation that actually effectuates the intent of Congress. 143 U.S. at 465-472. As the court of appeals succinctly stated, that "case had nothing to do with the constitutionality of general regulatory laws." Pet. App. 10.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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